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**JUL 14 1992**

FEDERAL COMMUNICATIONS COMMISSION

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July 13, 1992

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**VIA FEDERAL EXPRESS**

Office of the Secretary  
Federal Communications Commission  
1919 M Street, NW  
Washington, DC 20554

Dear Sir:

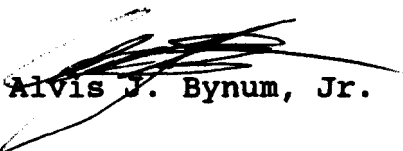
Enclosed please find original and nine copies of the Reply Comments of WJB-TV Ft. Pierce Limited Partnership and WJB-TV Melbourne Limited Partnership which are submitted to you in response to Notice of Proposed Rule Making 7909 in Docket No. 92-80.

Please file-stamp the enclosed copy of this letter and return it to us in the self-addressed stamped envelope.

If you have any questions, please give me a call.

Sincerely,

**WILLOUGHBY & HOEFER, P.A.**

  
Alvis J. Bynum, Jr.

AJB/jpd  
Enclosure

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**BEFORE THE  
THE FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554**

**FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY**

In the Matter of:

Amendment of Parts 1, 2, and  
21 of the Commission's Rules  
Governing Use of the  
Frequencies in the 2.1 and 2.5  
GHz Bands

P.R. Docket No. 92-80  
RM 7909

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**JUL 14 1992**

**REPLY COMMENTS OF WJB-TV MELBOURNE LIMITED PARTNERSHIP  
AND WJB-TV FT. PIERCE LIMITED PARTNERSHIP**

Pursuant to the Rules and Regulations of the Federal Communications Commission (the "Commission") and the directives of the Commission as set forth in its Notice of Proposed Rule Making No. 7909 in Docket No. 92-80, adopted on April 9, 1992 and released on May 8, 1992 (the "Notice"), WJB-TV Ft. Pierce Limited Partnership and WJB-TV Melbourne Limited Partnership (collectively referred as "WJB") hereby submit these Reply Comments.

WJB has reviewed all of the Comments that have been filed in this Proceeding. The problems in the wireless cable industry are a matter of concern to many, as is evidenced by the large volume of filings submitted. Interestingly, these filings were submitted by a wide range of players in the industry - everyone from legitimate operators and educational entities to greenmailers

and application mills. While disagreements exist as to solutions, everyone agrees that significant problems exist.<sup>1</sup>

In virtually all of these Comments, especially those submitted by persons with a realistic and good-faith intention to develop and operate legitimate wireless cable television systems, certain issues received priority treatment and attention. Some issues which received significant response were beyond the identified topics upon which the Commission requested Comments.<sup>2</sup> Nevertheless, the fact that these matters have independently been raised by so many respected participants in the industry demonstrates their critical importance to the future of wireless cable television. So while the Commission should consider the specific topics identified in its Notice, it should not turn a deaf ear to the pressing concerns of those in the industry.

The Comments demonstrate to WJB what it has suspected for some time - that others in the industry are facing the same impediments that have hampered its efforts. These impediments include the lack of coordination and uniformity between the processing and regulation of MDS and ITFS applications and

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<sup>1</sup> In general, WJB agrees with the views expressed by the Wireless Cable Association International, Inc. However, WJB is mindful that, because the Association's membership includes many of those suspected of the activities complained of herein, those Comments must be viewed accordingly. WJB believes that the Association's failure to attack certain activities should not be considered an endorsement of those activities.

<sup>2</sup> The Notice was quite expansive in asking Commenters to "set forth any alternative suggestions and all recommendations that in their view would prove more efficacious in terms of either easing the burden on applicants or on the Commission".

licenses, the fact that certain groups have been able to warehouse large inventories of channels solely for the purpose of resale, and most importantly, the activities of greenmailers and other unscrupulous fast-buck artists and the Commission's failure for whatever reason to curtail such activities. If the Commission is genuinely sincere about promoting the development of wireless cable television, it must address these concerns.

Based on its review of the Comments filed in this proceeding, as well as its own experiences, WJB believes that immediate action and relief on the matters below is warranted.

**I. The need for coordination and uniformity in the processing and regulation of ITFS and MDS applications and licenses.**

The Notice solicited Comments on which Bureau should be placed in charge of processing and reviewing MDS applications. WJB expresses no opinion on this matter per se - it believes that any of the Commission's Bureaus, if given the proper resources, should be able to fulfill the task. It does agree with those Commenters who expressed concern that transferring responsibilities without also transferring sufficient personnel with specialized knowledge in this area will further delay the processing of these applications. Thus, like many Commenters, WJB encourages the allocation of appropriate resources, regardless of which Bureau is ultimately assigned this responsibility.

Unfortunately, simply switching Bureaus will not necessarily solve a much bigger problem facing wireless operators -

of the applications filed for each market or area.<sup>4</sup> Preferably, this department could review all of these applications simultaneously, especially those that are filed simultaneously.

This simplified system has inherent advantages to both the operator and the Commission. For the operator, it would allow the monitoring of all applications through a single telephone call to an identified point of contact who would be knowledgeable on all relevant issues about a given market. From the Commission's standpoint, it would simplify the processing of all applications, in part by eliminating the need for duplicative reviews of engineering and other data.

To the extent possible, all of the licenses issued in each market should bear the same construction deadlines and expiration dates. Monitoring multiple dates is an administrative burden to operators, and the consequences of missing a deadline are severe, and possibly fatal, to the operation of a system. The coordination of these dates is a simple method by which one of the principal administrative headaches of operators could be eased.<sup>5</sup>

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<sup>4</sup> WJB understands that although most ITFS applications are sponsored by wireless operators, educational entities sometimes file independent ITFS applications. These applications should be reviewed on an independent basis. Hopefully, however, the data base maintained by the Commission will clearly indicate the status of any ITFS applications in the market, so that all parties will recognize the status of these channels.

<sup>5</sup> If licenses were issued at various times, a fairly simple process should be developed to allow dates of expiration to be synchronized. This process would allow for cost savings and efficiency on behalf of the Commission, its staff and the operator. Cost savings to the operator result in lower prices to the consuming public and is therefore in the public interest.

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Several Commenters have suggested that the construction deadline of all licenses in a particular market be designated as the deadline assigned to the last license issued. At present, an operator who has not accumulated sufficient channel capacity often must face the difficult choice of spending hundreds of thousands of dollars to construct a potentially worthless station or forfeiting its existing licenses. For this reason, WJB believes that not only should construction deadlines be uniform, but they should be assigned by taking into account the last channels authorized - or even channels expected to be authorized in the future.

WJB also agrees with those Commenters who recommend that the rules regulating MDS and ITFS operations be unified, at least to the extent possible. WJB especially favors the elimination of those provisions that serve no functional purpose, but only contribute to the administrative burden already placed on operators. For example, at present all ITFS channels must be used to transmit a specified amount of educational programming each week. The Commission recently recognized that by allowing the use of channel mapping technology, it could benefit both operators and their subscribers without compromising the educational character or usage of the channels as a group. Unfortunately, channel mapping equipment is expensive to purchase and the possibility that an error in its operation will throw the entire system into chaos is yet another fear for operators. For this reason, WJB, like at least one other Commenter, advocates that the Commission expressly allow all of the required educational programming for each block of

ITFS channels to be transmitted and broadcasted over a single channel within that group, without the need for channel mapping, so long as total educational usage of the block equals that required under present rules.

WJB does not intend for its suggestions to adversely affect the ITFS community, which it believes is an important ingredient in the future of the industry.<sup>6</sup> To the contrary, WJB is a strong supporter of the educational community, having entered or expecting to enter into contracts with a university, two community colleges, a local school board, and a private educational foundation. WJB believes, however, that proposals which ease the administrative and regulatory burden placed on legitimate wireless operators will ultimately benefit ITFS entities, in that they will lead to more operating systems in more communities, which in turn will fund ITFS operations.

WJB knows through its own experiences that wireless operators and ITFS licensees can work together for each other's mutual benefit. For example, with respect to its system in Ft. Pierce, Florida, WJB has entered into an agreement to lease excess ITFS capacity from the local school board. Through a CARS link which WJB will provide, the board will produce an afternoon television program entitled "Homework Hotline". The show will

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<sup>6</sup> In this regard, WJB is particularly encouraged that some insightful ITFS entities recognize the need for this coordination. See Comments of National ITFS Association at 3-4 ("Two regulatory and processing schemes, two decision making processes and two bureau chiefs approving facilities that directly impact each other seems a foolhardy way to proceed").



allow viewers to call in questions concerning their homework and studies to a panel of instructors, who will then answer them over-the-air.

This is the type of innovative programming that should symbolize the relationship between the ITFS community and wireless operators. The school board will benefit from the arrangement in that its students will be exposed to a quality, locally-produced learning tool that might not otherwise be available. WJB will also benefit, in that it will gain the use of the channels on a part-time basis and the addition of quality locally-produced programming for its system.

Coordinating the processing and regulation of ITFS and MDS applications will not have a detrimental impact on the school board or on any other ITFS lessee. To the contrary, to the extent that these procedures benefit wireless operators and speed the introduction of new service into more areas, they will benefit the educational community by allowing such cooperative efforts as "Homework Hotline".

## **II. The warehousing of licenses by certain groups of individuals**

The Commission is well aware that certain groups of persons have accumulated large inventories of channels, whether as Tentative Selectees, Conditional Licensees, or otherwise, solely for the purpose of reselling them. These persons, most of whom never had or have any intention of actually constructing their

stations, have in effect become the gatekeepers of available spectrum. When an investor desires to develop a certain market, he must inevitably look to these persons.

This situation is draining large amounts of capital out of the industry and into the pockets of those persons who filed speculative applications. For this reason, WJB supports all suggestions, including those contained in the Notice, which will enable the Commission to again assume its rightful role as gatekeeper.

WJB agrees with those Commenters who recommend that the Commission carefully review requests for multiple extensions of construction deadlines. Legitimate extensions to allow more time to construct should be distinguished from those that merely secure more time for the licensee to locate a buyer. The Commission should be especially wary in those cases in which the same persons consistently request extensions in more than one market, especially where those persons do not operate the underlying systems or have not entered into contracts with the system operators.

Finally, WJB agrees with these Commenters who, directly and indirectly, draw the Commission's attention to those persons who serve as "agents" or "representatives" of Tentative Selectees or Conditional Licensees. Quite often, these persons receive the bulk of the compensation paid upon the transfer of the underlying channels. In such cases, WJB believes that a de facto assignment of the license to the agent has occurred, and on this basis,

questions whether such transactions should, or already do, require Commission approval.

### **III. The activities of greenmailers and other unscrupulous individuals**

Several Commenters stressed the problems that the greenmailers, particularly one entity, have caused to the industry. The fact that so many persons have raised the issue proves that this is an area ripe for the Commission's attention.

Interestingly, the most notorious offender filed its own set of Comments in this Proceeding, in which it sought to portray itself as a legitimate developer and operator of wireless systems. Unfortunately, the evidence to the contrary is overwhelming. Petitions to Deny are presently pending before the Commission alleging that this group has, among multiple offenses, sponsored ITFS applications that designate receive sites that its transmitters cannot reach, designate receive sites that did not consent to serve as such, and create interference beyond that designated in its engineering studies.

Any belief that these groups are providing a benefit to the educational community is clearly erroneous. In one particularly egregious case, one such group sponsored the filing of an ITFS application by a small kindergarten; incredibly, the application included a proposed programming schedule consisting of Advanced Algebra, College Prep English, Chemistry, and Calculus. While such an application is laughable on its face, its effect may

be to prevent or delay a legitimate educational entity from securing adequate spectrum. Thus, in this case, the group has clearly provided a disservice to the educational community.

Likewise, the claim that these groups' actions are legitimate efforts to operate wireless cable systems is also misplaced. In one case, one group simultaneously submitted three ITFS applications for a single transmitter site, two of which designated horizontal polarity and one of which designated vertical polarity. These applications appear to be motivated by reasons other than the development of a wireless system.

Groups such as this do not possess the requisite character qualifications to be a Commission licensee, and the licenses which they have already acquired should be revoked. Any other action - or failure to act - sends the wrong message to those who would engage in such conduct. WJB joins those Commenters who question why such action has not been taken already.

Unfortunately, while the Commission can prohibit such groups from holding licenses, its rules do not currently prevent these groups from leasing ITFS spectrum. In other words, these groups could continue their present practices of paying minimal sums to cash-starved schools, obtaining control over channels and, in effect, circumventing the Commission's rules establishing minimal standards of character. WJB urges the Commission to not

only enforce its existing rules restricting these groups from holding licenses, but to adopt similar character qualifications to be applicable to ITFS lessees.

Respectfully submitted this 13th day of July, 1992.

WJB-TV Ft. Pierce Limited Partnership  
and  
WJB Melbourne Limited Partnership

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